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No. 584

In the Supreme Court of the United States

OCTOBER TERM, 1968

JOE R. RAMOS AND MARY RAMOS, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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Prior to January 1, 1956, petitioners, who are husband and wife, farmed a 219 acre ranch on which they grew almonds, peaches and olives. The question here is whether "partnerships" that petitioners purported to enter into with their two children for 1956 and 1957 were valid to deflect to the children, for federal income tax purposes, distributive shares of the earnings from the ranch. The land, trees and other improvements comprising the ranch and equipment necessary for its operation—all owned by petitioners—had a value between $200,000 and $230,000. (R. 33-

34.)[1] As of January 1, 1956, petitioners entered into an oral agreement with their children to form a partnership to operate the ranch. Each was to have a 25% interest in the business. The "partnership" acquired no interest in the land or equipment. Their daughter Dolores contributed no capital or services during 1956 other than bookkeeping for which she was separately compensated. The son, Joe S., who was on active duty in the Navy, contributed no capital or services. (R. 34-36.)

For 1957, a written agreement was executed. Only three partners were involved—the father and the children. Each was to receive one-third of the profits. Again, the partnership acquired no ownership of the ranch property, although a contemporaneously drafted memorandum provided for the payment of rent by the partnership to petitioners in the amount of 25% of the gross sales price of crops (R. 37-39). Dolores again did the bookkeeping, and Joe S. did some ranch work after his discharge from the Navy in October 1957, for which each was separately compensated. A purported capital contribution of $15,000 by each of the alleged partners was, in the case of the children, taken from the bank account where their "shares" of the profits of the 1956 "partnership" had been deposited (R. 36-37, 39-40).

The district court held that both the 1956 and 1957 arrangements were valid family partnerships for federal income tax purposes (R. 32). The court of appeals, accepting the evidentiary findings of fact (R. 33), reversed the district court's ultimate findings

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[1] Record references are to Appendix B of the petition.

that the partnerships were valid as "clearly erroneous" (R. 49-50).[2]

The decision of the court of appeals is correct and there is no conflict of decisions or other basis for further review.

1. The basic infirmity in the district court's decision was the failure to recognize and apply the rule established in *Commissioner* v. *Culbertson*, 337 U.S. 733, 740, 745, that, in order to validate a partnership for federal income tax purposes, it is necessary for each partner to contribute capital or services of value. Such contributions must be made presently, and the intent to provide capital or services in the future is not enough. *Scofield* v. *Davant*, 218 F. 2d 486, 489 (C.A. 5); see, generally, 6 Mertens, *Law of Federal Income Taxation* (1957 and Cum. Supp.) Section 35.08. "The vagaries of human experience preclude reliance upon even good faith intent as to future conduct as a basis for the present taxation of income." *Commissioner* v. *Culbertson*, *supra*, 337 U.S. at 740. Under these circumstances, to say that the family intended to form valid partnerships is meaningless—the essential ingredients of a partnership recognizable for federal income tax purposes were missing, since neither child provided services or capital, except for those services for which separate compensation was received and, in 1957, the residue

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[2] The district court made adjustments to partnership income which petitioners disputed on cross-appeal. In view of its disposition of the principal issue, the court of appeals dismissed the cross-appeal as moot. The decision of the court of appeals (R. 31-50) is reported at 393 F. 2d 618.

of their claimed distributive shares of "partnership" income from 1956. Significantly, the cash "contributions" by Dolores and Joe S. never were under their control and such amounts were neither needed nor utilized in the business during 1957 (R. 39-40, 48-49). Accordingly, the record affords no adequate basis for the ultimate factual inferences of the district court that there were valid family partnerships in 1956 and 1957.

2. This result is fortified by the Congressional action subsequent to *Culbertson*. See Section 340 of the Revenue Act of 1951, c. 521, 65 Stat. 452, 511, adding Section 191 and amending Section 3797 of the Internal Revenue Code of 1939, both of which now appear in Section 704(e) of the Internal Revenue Code of 1954.[3] By these amendments, Congress made clear

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[3] Internal Revenue Code of 1954:

SEC. 704. PARTNER'S DISTRIBUTIVE SHARE.

* * * * *

(e) *Family Partnerships.*—

(1) *Recognition of interest created by purchase or gift.*—A person shall be recognized as a partner for purposes of this subtitle if he owns a capital interest in a partnership in which capital is a material income-producing factor, whether or not such interest was derived by purchase or gift from any other person.

(2) *Distributive share of donee includible in gross income.*—In the case of any partnership interest created by gift, the distributive share of the donee under the partnership agreement shall be includible in his gross income, except to the extent that such share is determined without allowance of reasonable compensation for services rendered to the partnership by the donor, and except to the extent that the portion of such share attributable to donated capital is proportionately greater than the share of the donor attributable to the donor's capital. The dis-

that the taxation of family partnerships should be governed by two principles generally applied in taxing income from property and services: (1) the assignment of the right to receive future income, whether from personal service (*Lucas* v. *Earl*, 281 U.S. 111) or from property (*Helvering* v. *Horst*, 311 U.S. 112), will not shift the burden of taxation of such income, when realized, from the assignor to the assignee; and (2) on the other hand, a completed gift of income-producing property will effectively shift the tax incidence of the income thereafter derived from such property to the donee. See H. Rep. No. 586, 82d Cong., 1st Sess. 32-34; S. Rep. No. 781, 82d Cong., 1st Sess. 38-41.

Tested by these principles, it is plain that the court of appeals was justified in holding (R. 50) that "the evidence compels the conclusion that the family arrangements, in each year, created only an anticipatory assignment to the children of future income from property owned and controlled by the parents, and the services of taxpayer". See *Commissioner* v. *Culbertson, supra*, 337 U.S. at 739-740.

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tributive share of a partner in the earnings of the partnership shall not be diminished because of absence due to military service.

(3) *Purchase of interest by member of family.*—For purposes of this section, an interest purchased by one member of a family from another shall be considered to be created by gift from the seller, and the fair market value of the purchased interest shall be considered to be donated capital. The "family" of any individual shall include only his spouse, ancestors, and lineal descendants, and any trusts for the primary benefit of such persons.

3. With no elaboration beyond citation, petitioners claim that more than a score of cases are in conflict with the decision of the court of appeals here. There is no conflict. Those cases simply represent instances of the courts applying, as did the court here, the principles of *Culbertson* to the facts of a particular case. Compare, for example, *Snyder* v. *Westover*, 217 F. 2d 928 (C.A. 9); *Tomlinson* v. *Commissioner*, 199 F. 2d 674 (C.A. 5); *Stanback* v. *Commissioner*, 271 F. 2d 514 (C.A. 4).

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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